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Issued at Washington, DC on September 10, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Publishing of the Petition for Waiver of Mitsubishi Electric From the DOE Commercial Package Air Conditioner and Heat Pump Test Procedure (Case No. CAC-008)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Petition for Waiver and solicitation of comments.

SUMMARY: Today's notice publishes a "Petition for Waiver" from Mitsubishi Electric and Electronics USA, Inc. (MEUS). The MEUS Petition requests a waiver of the test procedures applicable to commercial package air conditioners and heat pumps. The Department of Energy (DOE) is soliciting comments, data, and information with respect to the Petition for Waiver.

DATES: The Department will accept comments, data, and information with respect to this Petition for Waiver on or before October 16, 2003.

ADDRESSES: Send written comments and statements to: U.S. Department of Energy, Building Technologies Program, Case No. CAC-008, Mail Stop EE-2J, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585-0121.

Copies of public comments received, this notice, and the Petition for Waiver may be read at the Freedom of Information Reading Room (Room 1E-190) at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585,

telephone: (202) 586-3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE-2J, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585-0121, (202) 586-9611; e-mail:

Michael.Raymond.ee.doe.gov; or

Francine Pinto, Esq., or Thomas DePriest, Esq., U.S. Department of Energy, Office of General Counsel, Mail Stop GC-72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585-0103, (202) 586-9507; e-mail:

Francine.Pinto@hq.doe.gov, or

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SUPPLEMENTARY INFORMATION: Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part B of Title III (42 U.S.C. 6291-6309) provides for the "Energy Conservation Program for Consumer Products other than Automobiles." Part C of Title III (42 U.S.C. 6311-6317) provides for a program entitled "Energy Efficiency of Industrial Equipment," which is similar to the program in Part B, and which includes commercial air conditioning equipment, packaged boilers, water heaters, and other types of commercial equipment.

Today's notice involves commercial equipment under Part C, which specifically provides for definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. With respect to test procedures, Part C generally authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which reflect energy efficiency, energy use and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314)

For commercial package air-conditioning and heating equipment, EPCA provides that the test procedures shall be those generally accepted industry testing procedures developed or recognized by the Air-Conditioning and Refrigeration Institute (ARI) or by the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE), as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992. (42 U.S.C. 6314(a)(4)(A)) This section also provides for the Secretary of Energy to amend the test procedure for a product if the industry test procedure is amended,

unless the Secretary determines that such a modified test procedure does not meet the statutory criteria. (42 U.S.C. 6314(a)(4)(B))

The relevant test procedure for purposes of today's notice and referenced in the version of ASHRAE 90.1 in effect in 1992 is ARI 210/240 (1989), "Standard for Unitary Air-Conditioning and Air-Source Heat Pump Equipment." The Air-Conditioning and Refrigeration Institute subsequently modified the 1989 version of the test procedure. The Department issued a Notice of Proposed Rulemaking proposing to adopt ARI 210/240 (1994) (65 FR 48828, Aug. 9, 2000), but has not taken final action with respect to that proposal. Thus, the currently applicable test procedure is contained in ARI Standard 210/240 (1989).

The Department's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered consumer products and electric motors. These provisions are set forth in 10 CFR 430.27 and 10 CFR 431.29. However, there are no waiver provisions for other covered commercial equipment. The Department proposed waiver provisions for covered commercial equipment on December 13, 1999 (64 FR 69597), as part of the commercial furnace test procedure rule. The Department expects to publish a final rule codifying this process in 10 CFR 431.201. Until that time, DOE will apply to commercial equipment the waiver provisions for consumer products and electric motors. These waiver provisions are substantively identical.

The waiver provisions allow the Assistant Secretary for Energy Efficiency and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. (10 CFR 430.27 (a)(1), 10 CFR 431.29 (a)(1)) Waivers generally remain in effect until final test procedure amendments become effective, thereby resolving the problem that is the subject of the waiver.

On June 13, 2003, MEUS filed a Petition for Waiver from the test procedures applicable to commercial package air conditioning and heating equipment. In particular, MEUS seeks a waiver from the currently applicable test procedures contained in ARI 210/